

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RICHARD TRAVIS MAKI,

No. C 09-5082 SI (pr)

Petitioner,

**ORDER DISMISSING  
UNEXHAUSTED CLAIM AND  
SETTING BRIEFING SCHEDULE**

v.

JAMES D. HARTLEY, warden,

Respondent.

Richard Travis Maki filed this pro se action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court ordered respondent to show cause why the petition should not be granted on three claims of ineffective assistance of counsel. Respondent moved to dismiss on the ground that state court remedies had not been exhausted for one of the three claims. The court granted the motion, finding that state court remedies were not exhausted for one of the claims and ordering petitioner to choose how to deal with this problem no later than January 14, 2011. See Order For Petitioner To Make Election Regarding Unexhausted Claim, p. 5. Petitioner was informed that, if he did not choose one of the available options, the court would dismiss the unexhausted claim. Id. Petitioner filed no response to the order and the deadline by which to do so has long passed. In light of the foregoing and to move this action toward resolution:

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1           1.       Petitioner's claim that his counsel provided ineffective assistance in that he did not  
2 call petitioner's son to testify is DISMISSED. The two remaining ineffective assistance of  
3 counsel claims warrant a response from respondent.

4           2.       Respondent must file and serve upon petitioner, on or before **May 27, 2011**, an  
5 answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases,  
6 showing cause why a writ of habeas corpus should not be issued. Respondent must file with the  
7 answer a copy of all portions of the court proceedings that have been previously transcribed and  
8 that are relevant to a determination of the issues presented by the petition.

9           3.       If petitioner wishes to respond to the answer, he must do so by filing a traverse  
10 with the court and serving it on respondent on or before **July 1, 2011**.

11           IT IS SO ORDERED.

12 DATED: April 12, 2011

  
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SUSAN ILLSTON  
United States District Judge